

**REMARKS**

Applicants submit this response to an Office Action mailed by the USPTO on May 17, 2005 (the "Office Action").

Applicants would first like to bring an apparent inadvertent error to the Examiner's attention. In the listing of the claims provided in applicants' amendment mailed on August 10, 2004, applicants inadvertently omitted claim 27 and included claim 29 twice (as claim 28 and claim 29). That inadvertent omission led to a misnumbering of claim 29 as claim 28, and of claim 30 as claim 29. Applicants further exacerbated this error on page 7 of the August 10, 2004 amendment, with reference to claim 28 in paragraphs 2 and 3. These errors were inadvertent and unintentional.

Applicants respectfully submit that the correct summary of the claims in the present application is as follows:

Pending:        Claims 1-35

Withdrawn:     Claims 3-28 and 30-33

Rejected:       1, 2, 29 and 34-35.

That summary is reflected in the complete listing of the claims filed in this amendment.

In the Office Action, the Examiner has rejected claims 1, 2 and 28 (should be claim 29, as discussed above) under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,406,455 B1 to Willis et al. Applicants respectfully traverse that rejection. Willis et al. is directed to a needleless syringe in which two substances may be mixed prior to injection into the skin of a patient. The mixed substances are expelled from the syringe as a combined substance through an

orifice 13 defined at an end of the syringe at a pressure sufficient to keep a channel in the patient's skin open to allow for drug flow through the channel and into the patient's body. The device disclosed by Willis et al. is intended to "expel the drug through orifice 13 and into the skin." See, e.g., column 7, lines 8-9. In addition, Willis et al. neither teaches nor suggests a spray device having a spray nozzle for permitting fluid under pressure in a tubular body to flow from the tubular body, while preventing unpressurized fluid in the tubular body from flowing from the tubular body, as now recited by applicants' claims (see, e.g., claims 1 and 29).

Thus, applicants respectfully submit that Willis et al. fails to teach or suggest each element recited by the claims of the present application, as is required of a proper 35 U.S.C. §102 reference. Applicants further respectfully submit that the Examiner's rejection of claims 1, 2 and 29 as being anticipated by Willis et al. is no longer tenable and respectfully request withdrawal of that rejection.

In the Office Action, the Examiner also rejected claims 1, 2, 28 (again, should be claim 29 as noted above), 34 and 35 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,923,448 to Ennis, III, in view of Willis et al. Applicants respectfully traverse that rejection. Ennis, III teaches a syringe having a cup-shaped nozzle tip that turbulently passes the liquid from the syringe as an atomized spray. See, e.g., Abstract. The above-noted deficiency in the disclosure of Willis et al. is not overcome by the disclosure of Ennis, III, nor by the knowledge of a person of ordinary skill in the art. Thus, applicants respectfully submit that the Examiner's proposed combination of Willis et al. and Ennis, III does not render the claims of the present application unpatentable. More specifically, neither Willis et al. nor Ennis, III, teach or

suggest spray device having a spray nozzle for permitting fluid under pressure in its tubular body to flow from the tubular body, while preventing unpressurized fluid in the tubular body from flowing from the tubular body.

In addition to the above-noted deficiencies in the disclosure of Willis et al. and Ennis, III, applicants further respectfully submit that the Examiner's proposed combination of Willis et al. and Ennis, III is improper because that combination would render the device disclosed by Willis et al. inoperable. Due to the importance of the design of the orifice 13 of Willis et al., and the requirement that the device disclosed by Willis et al. expel the substance at pressure sufficient to create a channel through and in a patient's skin, atomization of the substance, as required by the disclosure of Ennis, III would render the Willis et al. device inoperable. Conversely, modification of Ennis, III so that the liquid medication was expelled from the device at pressure sufficient to create a channel in the patient's skin is clearly undesirable, as Ennis, III discloses a device for dispensing "a medication as an atomized spray, internasally, interocularly, orally, otically or tracheally, etc." See, e.g., Ennis III, column 1, lines 42-43. Piercing the patient's skin is clearly undesirable for such a device. Thus, applicants respectfully submit that the Examiner's proposed combination of Willis et al. and Ennis, III is not permissible. See, e.g., MPEP §2143.01 "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teaching of the references are not sufficient to render the claims *prima facie* obvious." Citations omitted.

Thus, in addition to the distinguishing comments made above with regard to the disclosure of Willis et al. and Ennis, III, applicants respectfully submit that the Examiner's

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proposed combination of Willis et al. and Ennis, III is improper and request withdrawal of the rejection based upon that proposed combination.

Applicants submit that the Examiner's rejection of claims 1, 2, 29, 34 and 35 as being unpatentable over the combination of Ennis, III and Willis et al. is no longer tenable, and respectfully request withdrawal of that rejection.

In view of the foregoing remarks, applicants respectfully submit that this amendment is fully responsive to the Office Action, and that claims 1, 2, 29 and 34-35 are patentable over the prior art of record in the present application, and are thus in condition for allowance. Applicants thus respectfully request early and favorable reconsideration of the present application.

Applicant hereby authorizes the Commissioner to charge the fees necessary in connection with this amendment to Deposit Account Number 02-1666.

Any questions concerning this application or amendment may be directed to the undersigned agent of applicant.

Respectfully submitted,

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